

DECLARATION OF TERRY M. VALMASSOI

(1) I, Terry M. Valmassoi, residing at 14230 Briarcliff Point, Ft. Wayne, Indiana 46814, U.S.A., declare that I am the Executive Vice President of Master Spas, Inc. (hereinafter "Master Spas"), the assignee of all interest in U.S. Application No. 10/671,646, filed September 24, 2003.

(2) I have been involved in the hot tub industry since 1978. I have been employed by Master Spas for the past nine years and have been its Executive Vice President since prior to any of the events referenced in this Declaration.

(3) Beginning at a date prior to June 5, 2000, Master Spas employees, namely, Robert L. Lauter, Samuel K. Badiac and Elmer C. Herbert, and I jointly conceived of an invention for a theater spa entertainment system comprising a hot tub having an entertainment system preferably including a television set and spaced apart speakers separately housed in water-tight compartments as disclosed and claimed interalia in the application identified in paragraph (1) above. The compartments were conceived of as being recessed within the surrounding edge surface of the hot tub and being vertically movable between recessed positions and raised portions by a remote control system by the occupants of the hot tub. The inventions were

made the subject of Provisional Patent Application No. 60/332,861, filed November 6, 2001. U.S. Application No. 10/286,280 was filed November 1, 2002 based on the provisional application. The instant application is a continuation of U.S. Application No. 10/286,280. A prototype was built for a showing to 30 key dealers and sales representatives of Master Spas at an executive council meeting held at the Master Spas factory on June 5, 2000. The prototype was hand-operated in that the compartments were capable of being raised and lowered manually. The speakers and television set were incorporated in the prototype but were not operational and were present in order to demonstrate the overall function of the planned product.

(4) A copy of a Rule 131 Declaration dated March 18, 2005, was filed with a response dated October 11, 2005, in co-pending Application No. 10/670,854. This declaration stated that through error and without deceptive intent the following:

"A working prototype of the Master Spas design incorporating all of the features recited in the claims of the present application was shown to a group of 30 sales representatives and key Master Spas dealers at an executive council meeting held at the Master Spas factory in Fort Wayne, Indiana, on June 5, 2000."

Upon refreshing my recollection, I now remember that the prototype shown at the executive council meeting was not

working; it, in fact, did not have the control means disclosed and claimed in Application No. 10/670,854 for controlling the raising and lowering the compartments which houses the speakers and television set. The prototype was considered to be sufficiently complete to demonstrate the concept to about 30 dealers and sales representatives of Master Spas at an executive council meeting held at Master Spas' factory on June 5, 2000. The speakers and television set were incorporated in the prototype but were not electrically connected so as to be operable.

(5) I was the person responsible for organizing the executive council meeting of June 5, 2000, and that the meeting was held for the purpose of providing key sales representatives and dealers who comprised the Master Spas executive council with a preview of new products contemplated to be offered for sale beginning approximately in the year 2001. This meeting was intended to solicit feed back that might lead to product modifications from those most familiar with the relevant market place. A price had not been established for the theater spa system, no sales literature had been prepared, no offers for sale were made either directly or indirectly at the time of the June 5, 2000 meeting.

(6) As the person responsible for organizing the executive council meeting of June 5, 2000, I can state that from personal knowledge that the meeting was conducted under conditions of confidentiality. I clearly recollect arranging that each representative or dealer be required to sign a copy of a confidentiality agreement as a condition to attendance at the meeting. I saw the persons signing the agreements prior to entering the meeting space. The persons attending were well-known to me and understood the importance Master Spas placed on the confidentiality of such meetings. In support of my recollection concerning confidentiality, declarations of four attendees, stating that they signed declarations of confidentiality as a condition to attending the meeting, are attached to this Declaration and identified collectively as Exhibit A.

(7) A copy of the standard Master Spas confidentiality agreement which, to the best of my knowledge and recollection, is the form of agreement signed by the attendees at the June 5, 2000 meeting is attached as Exhibit B. There were no commercial documents, price lists or quotations, advertising brochures, publicity releases or other documents relating to this product that were made available at this meeting or even in existence at the time of the meeting.

(8) I first saw the Cal Spas design at the Aqua Trade Show held at the Las Vegas Convention Center on February 6, 2001 in Las Vegas, Nevada. Although they were showing the design, the spa was not yet in production, and I understood and believed they were not delivering these units to dealers until late spring of 2001.

(9) I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity to the application of any patent issued thereon.

11/7/06
Date


Terry M. Valmassoi